

President Nixon, the FISA court was established in 1978 to provide oversight for intelligence gathering, in addition to that already provided by the executive and by Congress. Now, there are those who complain that the FISA court accedes too often to requests for government access to information, and does not appear to resemble a true court in that there is no public advocate opposing the government position.

But the nearly uniform success of the government before the FISA court is due both to the government's careful restraint in presenting applications, and to pushback from the court itself—which results in the amendment of applications. Even when the government applies for wiretaps or search warrants in ordinary criminal cases there is no advocate opposing the application.

Nonetheless, this new bill would establish a permanent advocate appointed by the court to oppose the government's applications before the FISA court. This provision has elicited an extraordinary written objection from a former presiding judge of the FISA court. U.S. District Judge John D. Bates points out that the presence of such an advocate, who cannot conceivably be aware of all the facts, would simply add to the burdens of the court and could wind up sacrificing both national security and privacy.

This bill redefines the FISA court, which was never meant to be an adversary tribunal and was imposed simply as an added safeguard in the 1970s, without regard to its history or its purpose. Worse, it is a three-headed constitutional monster: It is a violation of both the separation of powers principle and the Constitution's appointments clause by having judges rather than the president appoint the public advocate, and then it has the advocate litigate against the Justice Department when both executive offices are supposed to be controlled by the president.

The bill is not an unrelieved disaster. It rightly allows for the expansion of metadata gathering to include more calls made by cellphones.

Not surprisingly, the bill has received the endorsement of President Obama's attorney general, Eric Holder, and his director of national intelligence, James Clapper, who in a Sept. 2 letter to the Senate Judiciary Committee said they were "comfortable" with the bill's provisions—even as they conceded that the bill may have "additional impacts that we will be able to identify only after we start to implement the new law."

If that calls to mind the Affordable Care Act and the suggestion that we should wait and find out what is in the bill until after it passes, bear in mind that "additional impacts" here may include holes in the ground where buildings used to stand and empty chairs where people used to sit.

There is no immediate or emergency need for this piece of legislation. Current surveillance authorities do not expire at the end of this year, which is fortunate given the current threats we face at home and abroad. The USA Freedom Act should await the attention of the Congress that will actually oversee it. A change to national-security procedures is not something to be rushed through in a lame-duck session.

KEYSTONE XL PIPELINE

Mr. MCCONNELL. On an entirely different matter, later today the Senate will vote on whether to send Congressman CASSIDY's Keystone jobs bill to the President. It is a vote that is long overdue but certainly welcome. Keystone XL is just common sense. It is a shovel-ready jobs project that would

help thousands of Americans find work. It would increase our supply of North American energy. It would do all of that with minimal net climate impact. That is why the American people support it. That is why Republicans support it. That is why so many rank-and-file Democrats support it too.

I wish the Senate would have followed the lead of Congressman CASSIDY and his House colleagues in approving Keystone years ago. It is just common sense. Those who took a serious look at the science and the potential benefits reached that conclusion long ago. They understand that the whole drama over Keystone has been as protracted as it has been unnecessary. We hope to turn the page on all of that today.

The reason we are able to have this vote is because the American people sent a strong message earlier this month. They told us they just want Washington to get on with approving serious policies such as Keystone and then move on. That is why after years of delay and so many thwarted attempts to bring Keystone up for a vote, the Democratic leadership is finally, after 6 years, allowing us to vote on passage of the Cassidy Keystone bill. That is a good thing. It is a step forward. Now it will be up to our friends on the other side to vote with us and actually pass the Cassidy Keystone bill through Congress.

The President's remarks opposing this bipartisan legislation are certainly not helpful. Republicans are committed to getting Keystone approved. We want to see those jobs created as soon as possible. That is what the people want. The House already acted long ago, and Congressman CASSIDY and his colleagues, such as Senator HOEVEN, who is here on the floor, deserve recognition for their years of hard work on this issue.

So I would urge a "yes" vote on the legislation to send Congressman CASSIDY's Keystone bill to the President and create more American jobs. If not, then a new majority, after the beginning of the year, will be taking this matter up and sending it down to the President.

I also wish to take a moment to thank the Senator from North Dakota for his persistence on this issue for literally years.

Without his leadership I don't know where we would be. I just want to extend my gratitude to him for his great work on this matter.

I yield the floor.

Mr. LEAHY. Would the Republican leader yield for a question?

The minority leader will not yield for a question, but I would note, based on his concerns about the bipartisan piece of legislation regarding the NSA and others and his concern about ISIL—which we all share—that the NSA and all of our intelligence community had every single tool the Republican leader advocates for, while ISIL built up its strength, while ISIL had Iraq's army flee from them while they went for-

ward. With every single one of those elements the Republican leader advocates for, there was not one single alarm bell that rang. So let's deal with the facts and not hypotheses.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

TO APPROVE THE KEYSTONE XL PIPELINE

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of S. 2280, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 2280) to approve the Keystone XL Pipeline.

The PRESIDING OFFICER. Under the previous order, there are 6½ hours of debate equally divided between proponents and opponents of this measure.

The Senator from California.

Mrs. BOXER. I have a parliamentary inquiry. I am confused because Senator MCCONNELL called the bill the Cassidy Keystone bill, and I thought we were debating the Hoeven-Landrieu bill. Could you tell me which bill it is, because that is very important.

The PRESIDING OFFICER. The Senate is considering S. 2280.

Mrs. BOXER. So we are considering the Hoeven-Landrieu bill. I just wanted that to be clear.

The PRESIDING OFFICER. Yes. The Senator from North Dakota.

Mr. HOEVEN. Today we vote on S. 2280, introduced by myself and Senator LANDRIEU. There are actually 54 sponsors on the legislation with us. So we have a total of 56 sponsors of this bipartisan bill. That is the same bill that has been passed in the House of Representatives. That was passed on Friday—the same version. The prime sponsor in the House was Representative CASSIDY.

The bill we vote on today, S. 2280, is approval of the Keystone XL Pipeline. We have actually passed legislation on the Keystone XL Pipeline before. This is not the first bill. In 2012, we passed legislation that required the President to make a decision on the Keystone XL Pipeline. We attached it to the payroll tax holiday. At that time the President turned down the pipeline project.

So today we have submitted a number of different pieces of legislation, but this legislation actually has Congress approving the Keystone XL Pipeline.

When the President turned down the project, what we did was we went back and we did the research.

Under the commerce clause of the Constitution, Congress has the authority to oversee commerce with foreign powers, with other countries.

So in this situation, Congress has the authority to approve the Keystone XL Pipeline crossing the border from Canada into the United States, and that is